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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 403rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 November 1999, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.403/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Consideration of the initial report of Kyrgyzstan (CAT/C/42/Add.1)

1. At the invitation of the Chairman, the delegation of Kyrgyzstan took places at the Committee table.

2. Mr. SHARSHENALIEV (Kyrgyzstan) said that, on gaining its independence in 1991, his country had immediately ratified the Universal Declaration of Human Rights as a sign of the high priority it attached to human rights assurance and protection in domestic and foreign policy. His Government was well aware that successful fulfilment of its political and socio-economic reforms was indivisible from democratic reforms and institutional respect for human rights and basic freedoms. History clearly demonstrated that the systematic infringement of human rights inevitably led to socio-political destabilization, first at national, then at regional level.

3. Since independence, Kyrgyzstan had signed and ratified, inter alia, the six main international treaties relating to civil, political, economic, social and cultural rights. Kyrgyzstan's domestic and foreign policy reflected the principle that all human rights were common, interdependent and indivisible. The Constitution fully incorporated the principles of popular sovereignty, popular representation, the separation of powers, recognition of fundamental human rights and freedoms, and political and ideological pluralism. Under the Constitution, the State guaranteed the rights and freedoms not only of Kyrgyz citizens, but of all persons present or residing in the Republic. International experts were in no doubt that a national system for human rights protection had been developed in Kyrgyzstan.

4. Following a referendum held in 1998, the Constitution had recognized the people's inalienable right to private property, including land, as a natural source of prosperity and economic and creative activity, and as a guarantee of economic and personal independence. A further consequence of the referendum was that provisions ensuring greater freedom for the spoken word and the press were incorporated into the Constitution. Article 65 expressly forbade the enactment of laws restricting those freedoms.

5. The measures which had been taken to enhance the overall human rights situation were complemented by other notable innovations. Firstly, the presidential decree of 5 July 1997 had established the Human Rights Commission answerable to the President of the Kyrgyz Republic, whose members included representatives from the Zhogorku Kenesh (Parliament), the political parties, and several ministries and governmental departments. The State Commission for the Family and Women, which reported to the Kyrgyz Government, had also been established at that time. The Zhogorku Kenesh had ratified the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Political Rights of Women, and the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. Preparations were now in hand to ratify the international agreements relating to the rights of national minorities. A key factor in

the national strategy to protect the human rights of Kyrgyz citizens in the future was the existence of an independent judiciary, which was established under article 79 of the Constitution.

6. Pursuant to United Nations General Assembly resolution 52/117, his Government had set up a national organizing committee in connection with Kyrgyzstan's observance of the fiftieth anniversary of the Universal Declaration of Human Rights. The Committee's activities had included the publication of papers and collected articles, the organization of scientific conferences, symposia and seminars, and the issuance of a series of postal stamps illustrating the struggle for human rights. In addition, a law had been passed granting an amnesty in honour of the seventh anniversary of the independence of the Kyrgyz Republic and the fiftieth anniversary of the Universal Declaration. In 1998, a two-year moratorium on the death penalty had been introduced as one of several measures introduced by presidential decree to mark the same occasion.

7. Kyrgyzstan complied closely with its commitments under the human rights instruments to which it had acceded within the framework of the United Nations and the Organization for Security and Cooperation in Europe (OSCE). It firmly upheld the principles of civilized coexistence, and worked consistently to prepare the national reports required under the six main human rights treaties, with a view to maintaining consistent international monitoring of the human rights situation in Kyrgyzstan. The 1,357 non-governmental organizations (NGOs) currently in Kyrgyzstan played an increasingly active part in the process of strengthening the rule of civil law and democratic institutions.

8. He could not finish without referring to the frequent problems being experienced by the young Republic in matters relating to human rights protection and assurance. Like all States with a transitional economy, Kyrgyzstan was experiencing economic difficulties, which prevented it from ensuring full compliance with social and economic rights, particularly the right to work. The movement towards democratic reform and the protection of human rights in Kyrgyzstan were being hampered by a persistently low standard of living, unemployment, crime, and the presence of illegal migrants and refugees from neighbouring Central Asian countries. The existing socio-economic constraints would exert a negative influence on the efforts to establish a civil society for a considerable time to come.

9. The CHAIRMAN, speaking as Country Rapporteur, commended the delegation on the timely submission of Kyrgyzstan's initial report. The Committee welcomed the fact that Kyrgyzstan had expressed no reservation in connection with article 20, and hoped that in the near future it would feel sufficiently confident to make the appropriate declarations under articles 21 and 22. In his comments he intended to refer to some of the considerable amount of information the Committee had received from NGOs, notably the descriptions of individual cases supplied by the Kyrgyz Council for Human Rights (KCHR).

10. The information in the report indicated that although torture was prohibited in Kyrgyzstan the crime of torture was not defined in its Criminal Code. If that was not so, he asked the delegation to refer the Committee to the relevant provision and supply it with the actual definition. However, if that was correct, he wondered how a person could be prosecuted in Kyrgyzstan for torture, and how it would be possible for the delegation to quote relevant statistics on torture, since the absence of a definition made it impossible to collect them.

11. In relation to articles 1 and 2 of the Convention, he noted that article 16 of the Kyrgyz Constitution provided that "The fundamental human rights and freedoms shall be recognized and guaranteed in accordance with the universally recognized principles and rules of international law and the inter-State treaties and agreements on human rights ratified by the Republic". That formulation was likely to create considerable difficulties in situations where the nature of fundamental rights had to be accurately identified, such as in the event of a prosecution or litigation concerning compensation. Moreover, how did Kyrgyzstan incorporate treaties into its domestic law on that basis? The report implied that some restrictions on the exercise of human rights and freedoms were still regarded as constitutionally valid. Could the delegation provide examples? With regard to the role of the Commission on Human Rights, he had been surprised to learn that its membership comprised representatives of ministries and government departments. That hardly guaranteed its independence. In most countries, such a body would be regarded with great suspicion. He would therefore like to know how the Commission functioned, what its powers were and which ministries were represented. If its chairman really acted as Ombudsman, to what extent did his duties involve investigation into allegations of government wrongdoing, and did he report to Parliament rather than the Executive in that role?

12. Article 18, paragraph 3, of the Constitution, stated that no one could be subjected to arrest or detention "except on the grounds of law". He would like to know what that meant, and also what was meant by paragraph 4, which stated that the death penalty could be imposed "only in exceptional cases". What were those exceptions? Moreover, he had learned that the death penalty had been carried out in some 40 cases in each of the two years preceding the moratorium currently in force. What method of execution had been used?

13. Although there was no definition of torture in the Criminal Code, it did impose a penalty for "systematic or brutal violence". He would like to know the delegation's opinion as to what that constituted. The report stated that article 21 of the Criminal Code prohibited the use of violence or force in obtaining testimony from persons under investigation. However, the abundant material supplied by NGOs testified to widespread coercion of confessions. Was such coerced evidence used in subsequent trials of the accused? How long could a person be detained at the initial interrogation stage in the police station without having access to a judicial officer? Could the prisoner be held incommunicado, and was access to a lawyer of his choosing and/or medical professionals granted? In view of the abundant information supplied by NGOs concerning severe beatings in custody, sometimes leading to death, he would like the delegation to comment on the legal position and the practical facts pertaining to pre-trial detention.

14. He had the strong impression that under the current system the procurator still held sway, just as under the old Soviet system. He asked the delegation to comment on the role played by judges in assuring protection for the accused. Did prisoners in Kyrgyzstan have the right of habeas corpus - essentially a procedure which enabled an accused detainee to have his case examined by a judge rather than a prosecutor. In the light of the assertion in the delegation's opening remarks that the judiciary in Kyrgyzstan was independent, he would like to know who appointed and dismissed judges, and whether they were appointed for a fixed term or until they reached a certain age. Would the delegation provide the same information in respect of prosecutors?

15. The report indicated that historically Kyrgyzstan had adopted a strict approach to territorial jurisdiction, and still did. It was likely that that situation would have to be revised in the context of the Convention against Torture, whose articles 5-8 clearly imposed on a State the obligation to adopt universal jurisdiction over torturers. Would Kyrgyzstan have the capacity to apply universal jurisdiction in the case of a non-Kyrgyz torturer who came to Kyrgyzstan? Could such a person be prosecuted, assuming the evidence was available and there was no demand for his extradition?

16. What was a "punishment cell", as referred to in paragraph 57 on page 14 of the initial report? What were the methods of instruction used to train the police authorities and raise awareness of human rights issues? Many NGO cases mentioned "militia men"; was that just another name for the police, or a separate entity? If it was separate, what training were militia men given in human rights, particularly issues related to torture? What training did medical doctors receive to look for and recognize the sequelae of torture? The oral report had mentioned human rights courses in law schools and the two universities, but the Committee wanted to know how rigorous police training actually was; were human rights and the duties of the police towards the citizen a part of the curriculum?

17. How long could a person be held in pre-trial detention? One NGO had quoted a case where someone had been held for six years without trial. What protection did a person in such circumstances enjoy in terms of having the case dismissed or brought to court? Since the delegation had received a copy of the alternative report produced by the Kyrgyz Committee for Human Rights (October 1999), he would not detail all the cases, but he pointed out that there were many alarming basic similarities between them. They particularly reflected a climate of casual brutality and violence by the militia towards the public, including brutal beatings, often simply to show who was in charge. Police officers were also said to be extorting financial advantages from members of the public. Moreover, when complaints were filed, the result was often further violence to the complainant. He asked the delegation to consider the sadly typical case of Mr. Skorokhodov, whose problems had started when he had confronted the person who had stolen his wife's watch in a market. He had subsequently been arrested, convicted and fined. He had suffered serious injuries and when he had filed a complaint for police brutality, he had been harassed by the militia. When he had reported his story to a newspaper, he had been prosecuted, fined and sentenced to six years' imprisonment. Would the delegation please let the Committee know whether the facts of the case were accurate, and if so what steps had been taken to remedy the situation and offer the victim redress. The material in the NGO reports suggested that the militia and police acted with impunity and citizens had no redress. Little appeared to be done by the State. Often those who complained were subjected to further brutality. It was a serious problem and he would like the comments of the delegation.

18. Another concern was that while the formal laws and legal structures were basically sound, they were not applied in practice. A classic illustration of that was the obligation on the authorities detaining a person to allow him or her access to medical treatment, which seemed in fact to happen only in exceptional cases. With torture, or even cruel or degrading treatment or punishment, medical evidence was often crucial. Moreover, it afforded equal protection to the police and the detainee, since it could also prove that torture had not taken place in the case of false allegations. However, if the detainee had no access to treatment or medical opinion, and was able to go to hospital only six or seven weeks later, by then medical personnel often could

not tell if the injuries he had suffered were actually related to the treatment he had alleged. Therefore it was vital to have access to medical treatment at the earliest possible stage. Also, detainees were supposed to have access to and be represented by a lawyer, but how in practice did that function? If a detainee undergoing interrogation requested a lawyer, was the interrogation suspended until the lawyer arrived? Was there any provision for legal aid?

19. The Prosecutor-General had mentioned that due to structurally dramatic changes there could be no absolute guarantee of social and economic rights. However, the Convention against Torture was even more fundamental, treating only two narrow sets of civil and political rights, namely the physical and psychological security of the individual. Those should not depend on a State's resources. The Committee looked, above all, for a willingness to comply, and for signs of a genuine attempt to do so with the resources available. Members of the Committee commented on what they saw the situation to be, which was often a very different view from the official version. They made suggestions for improvements, and dialogued with the State, in the hope of seeing structural, educational and attitudinal changes over time. Kyrgyzstan had previously had very structured institutions, and to some extent that was still the case; there would need to be considerable changes if the Government was to achieve its aims. The Committee recognized that success could not be expected overnight. However, he was very concerned about allegations the Committee had received, many of which, if true, clearly constituted torture under the Committee's definition. He would like the delegation to comment on how accurate the information was, and how effective Government responses to such allegations were.

20. Mr. YU Mengjia (Alternate Country Rapporteur) thanked the head of delegation for his oral introduction. From that and the report, it had been clear that Kyrgyzstan was making efforts to improve legislation. The Committee was also aware that, in addition to many unforeseen problems caused by the process of radical transition and reform, those efforts were being hampered by unfavourable social and economic legacies from the Soviet regime. He complimented Kyrgyzstan on its achievements, but felt there were still several major points to be raised. The Committee's role was not to accuse anyone, but to try to identify the actual conditions in the country, and to make suggestions in order to help improve observance of the Convention.

21. Article 12 called for "prompt and impartial investigation", so that the true facts could be established and officials who violated the Convention could be brought to justice. He could not overemphasize the importance of ensuring that officials were not to violate the Convention with impunity. Generally speaking, he felt that legal provisions were in keeping with the Convention, but the four cases cited in paragraphs 81 to 85 did not give a clear impression of how Kyrgyzstan was attempting to comply with article 12 in practice. The Committee had information and allegations of a serious nature, including cases in which torture had led to serious injuries and even death. Those cases were more instructive with regard to the problem; but, with regard to the solution, could the delegation cite some more typical cases to illustrate how seriously they were taking their obligations under the Convention. How rigorous were the punishments meted out to officials convicted of torture? If cases of torture were brought to the attention of the authorities by NGOs or the media, did the authorities automatically investigate them? What judicial bodies were responsible for that investigation? An independent mechanism for investigation was vital. Although Kyrgyzstan did not have an exact definition of torture, could they provide any statistics on torture cases according to their own criteria? For instance, how

many complaints of torture were made in a year? What proportion led to penalties or disciplinary action? How many were dismissed due to lack of evidence, or acquitted?

22. Under article 13, the State party had to ensure the right to complain and the protection of the complainant and witnesses. The Committee had received allegations that victims of torture who had complained had been met with indifference, or ignored. Victims continued to be beaten and subjected to other methods of torture, and the perpetrators went unpunished. The ultimate responsibility rested with the authorities, w .o appeared to condone and in some cases even connive at such behaviour, if the allegations were correct. In one glaring case, the perpetrator was actually removed from his job but promoted to a higher post. Could that really be the case? What practical measures were the authorities taking? Paragraph 86 of the report stated that a victim was entitled to submit a complaint "to a procurator either directly or through a person who carried out the initial inquiry or the pre-trial investigation". That system was inherently flawed, since the procurator was to some extent personally involved. Submitting the complaint to those who had carried out the initial inquiry was of even more dubious worth, since they might be the very people involved in the wrongdoing. An independent complaints procedure was necessary.

23. Article 15 prohibited the use of torture to force a confession, and laid down the inadmissibility of such evidence. However, use of force to extract a confession was still unfortunately common practice worldwide. What was the situation in practice in Kyrgyzstan and what safeguards did the authorities provide in that respect?

24. What steps did they take specifically to protect vulnerable groups such as women and children? The Committee had heard that juvenile offenders were confined together with adults, and that small children had been ill-treated and even tortured. What would be done to rectify that abominable situation? They had also heard that prison conditions were very poor, with severe overcrowding. Such conditions could lead to the spread of diseases and instances of crime. How were the authorities coping with that problem?

25. He was aware of the arduous and complex task of transition and had read the core document (HRI/CORE/1/Add.100), which spoke of a sharp deterioration of conditions in society, underpaid police officers, wages being delayed by several months, etc., all of which were adverse factors. However, torture was abhorrent, a blot on the conscience of mankind and it also damaged morale and the public trust; it must not be tolerated, whatever the circumstances. He hoped that Kyrgyzstan would earnestly continue to eradicate the scourge.

26. The CHAIRMAN, speaking in his capacity as member of the Committee, asked how victims of torture obtained compensation and what form such compensation took.

27. Mr. SØRENSEN, noting that the Kyrgyz delegation had spoken of amnesty laws, asked how they worked and what they entailed. Did they take into consideration that the Convention against Torture prohibited impunity, even by means of an amnesty?

28. He was pleased to learn that Kyrgyzstan had celebrated the fiftieth anniversary of the Universal Declaration of Human Rights. He suggested that it also consider celebrating the United Nations International Day in Support of Victims of Torture. Paragraph 91 of the initial

report stated that full compensation was to be made for material and moral injury to the victims of torture. By commemorating the International Day, Kyrgyzstan would show understanding for the victims of torture and recognize that they must have redress.

29. Another way of demonstrating a readiness to help rehabilitate the victims would be for Kyrgyzstan to make a symbolic contribution to the United Nations Voluntary Fund for Victims of Torture.

30. Mr. MAVROMMATIS said that the real test was whether a country had the practical machinery to ensure that human rights were actually implemented. In the case of Kyrgyzstan, even the legal framework appeared to be lacking. Without a definition or specific crime of torture, how could the numerous serious allegations of torture or ill-treatment be addressed?

31. Turning to a number of specific examples in the initial report, he noted that according to paragraph 8, the Code of Criminal Procedure and the relevant regulations contained no provisions whatever permitting humiliation or degradation either of short-term detainees or of remand prisoners. He assured the Kyrgyz delegation that in no country would they find rules specifically permitting humiliation or ill-treatment. What the Committee needed to know was what practical measures were taken to prevent such practices. Similarly, paragraph 14 stated that there was nothing in law which prevented reference to the provisions of the Convention or of other valid international agreements in courts, whereas he wanted to know what legal provisions actually encouraged persons to invoke the Convention. For instance, could the Kyrgyz delegation report on cases in which the courts had cited the Convention in acquitting a person whose confession had been obtained by force?

32. He was aware of the difficulties facing a country which was trying to overcome the effects of a former oppressive regime, but he was not convinced that the Kyrgyz Government was really determined to work toward ensuring the enjoyment of human rights and fundamental freedoms; much still remained to be done if torture was to be prevented in Kyrgyzstan.

33. Mr. YAKOVLEV said that even the most noble declarations did not automatically mean that the goals of protecting human rights and preventing torture were being implemented in practice. Judicial machinery was needed. He inquired whether Kyrgyzstan planned to reform the Code of Criminal Procedure and make it more open, as most of the other successor States of the Soviet Union had already done.

34. In a closed system, the prosecution had enormous power. Court control of the preliminary investigation was essential to ensure that prosecution was effective, legal and free of any abuse. Arrests that were not subject to any court supervision were typical of closed systems and created situations in which the rights of the individual were not protected. The same applied to the right to appeal the arrest in court. Far from weakening the legal system, the separation of prosecution and judiciary actually strengthened it. A court decision must be required to prolong any investigation, and there should be legal guarantees concerning time limits, because otherwise the accused might spend years in detention without trial.

35. Another essential point was the involvement of a lawyer in the preliminary investigation. In the Soviet Union, the system had been closed to the lawyer for the defence, who had not been

allowed to be present until the investigation had been completed and the case brought to court. A person had to be permitted to obtain the assistance of a lawyer as soon as he was arrested. Detainees must also have access to a doctor. Those were important guarantees for preventing abuse of power. Confessions extracted under duress must not be allowed as evidence. In that context, he asked whether there was any training of staff to heighten awareness of the principles set out in the Convention.

36. Mr. SILVA HENRIQUES GASPAR said that according to paragraph 79, the national security authorities could initiate proceedings and carry out criminal investigations in relation to matters over which they had competence. Did their competence differ from that of the Procurator's Office, and if so, what offences were concerned? Expanding on a question by Mr. Yu Mengjia, he inquired whether there were special legal measures for minors and at what age minors could be made criminally responsible for their acts and imprisoned. He would like to know more about the system of corrective labour. How long did it last, and what kind of labour was involved?

37. Mr. EL MASRY, referring to paragraph 14, which stated that the provisions of the Convention were applicable in the Republic through the implementation of the legal rules that embodied them, asked whether there was any machinery to ensure that the Convention could be automatically invoked in Kyrgyzstan's domestic legal system.

38. Ms. POLAJNAR-PAVČIK, noting that Kyrgyzstan still had the death penalty and made use of correctional colonies, sought further information on what penalties were included in the Criminal Code.

The public part of the meeting rose at 11.50 a.m.